

<sup>1</sup> 5 U.S.C. § 8101 *et seq.*

people he had to work with caused him a lot of stress.” He first became aware of his emotional condition and attributed it to factors of his federal employment on April 23, 2018.

In support of his claim, appellant submitted progress notes dated May 21 and 23, 2018 from Melanie Hemmingsen, a physician assistant.

In an April 4, 2018 e-mail to appellant, J.R., Chief of Police Service, indicated that he addressed “the issue” with J.B. and inquired with appellant as to whether there had been any other issues. Appellant responded indicating that he had noticed an improvement in J.B.’s demeanor and that it was a very good day in the Personal Identity Verification (PIV) office. He also provided a May 30, 2018 e-mail addressed to a “PIV Card User” indicating that a PIV card was ready for pick up. Appellant copied J.R. and J.B. on this e-mail. J.R. replied and asked why appellant sent the e-mail to him. Appellant indicated that J.B. had instructed him to do so. In a June 4, 2018 e-mail, appellant’s union president, G.B., reported that appellant felt that he was working in a hostile work environment and requested to be temporarily relocated as he no longer felt safe in his present work area.

In a development letter dated August 9, 2018, OWCP informed appellant that additional factual and medical evidence was needed to establish his emotional condition claim. It advised him of the type of factual and medical evidence needed and provided a questionnaire for his completion. OWCP afforded appellant 30 days to submit additional evidence. Appellant did not respond.

By decision dated September 18, 2018, OWCP denied appellant’s emotional condition claim, finding that he had not established the factual elements of his occupational disease claim.

### **LEGAL PRECEDENT**

An employee seeking benefits under FECA<sup>2</sup> has the burden of proof to establish the essential elements of his or her claim, including the fact that the individual is an employee of the United States within the meaning of FECA, that the claim was filed within the applicable time limitation, that an injury was sustained while in the performance of duty, as alleged, and that any disability or specific condition for which compensation is claimed is causally related to the employment injury.<sup>3</sup> These are the essential elements of each and every compensation claim regardless of whether the claim is predicated on a traumatic injury or an occupational disease.<sup>4</sup>

To establish an emotional condition in the performance of duty, a claimant must submit: (1) factual evidence identifying an employment factor or incident alleged to have caused or contributed to his or her claimed emotional condition; (2) medical evidence establishing that he or she has a diagnosed emotional or psychiatric disorder; and (3) rationalized medical opinion

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<sup>2</sup> *Id.*

<sup>3</sup> *A.J.*, Docket No. 18-1116 (issued January 23, 2019); *Gary J. Watling*, 52 ECAB 278 (2001).

<sup>4</sup> 20 C.F.R. § 10.115(e); *M.K.*, Docket No. 18-1623 (issued April 10, 2019); *see T.O.*, Docket No. 18-1012 (issued October 29, 2018); *see Michael E. Smith*, 50 ECAB 313 (1999).

evidence establishing that the accepted compensable employment factors are causally related to the diagnosed emotional condition.<sup>5</sup>

Workers' compensation law does not apply to each and every injury or illness that is somehow related to an employee's employment.<sup>6</sup> There are situations where an injury or an illness has some connection with the employment, but nevertheless does not come within the concept or coverage of workers' compensation. Where the disability results from an employee's emotional reaction to his or her regular or specially assigned duties or to a requirement imposed by the employment, the disability comes within the coverage of FECA.<sup>7</sup> On the other hand, the disability is not covered when it results from such factors as an employee's fear of a reduction-in-force or his or her frustration from not being permitted to work in a particular environment or to hold a particular position.<sup>8</sup>

Administrative and personnel matters, although generally related to the employee's employment, are administrative functions of the employing establishment rather than the regular or specially assigned work duties of the employee and are not covered under FECA.<sup>9</sup> However, the Board has held that where the evidence establishes error or abuse on the part of the employing establishment in what would otherwise be an administrative matter, coverage will be afforded.<sup>10</sup> In determining whether the employing establishment has erred or acted abusively, the Board will examine the factual evidence of record to determine whether the employing establishment acted reasonably.<sup>11</sup>

For harassment or discrimination to give rise to a compensable disability under FECA, there must be probative and reliable evidence that harassment or discrimination did in fact occur.<sup>12</sup> Mere perceptions of harassment, retaliation, or discrimination are not compensable under FECA.<sup>13</sup>

In cases involving emotional conditions, the Board has held that, when working conditions are alleged as factors in causing a condition or disability, OWCP, as part of its adjudicatory

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<sup>5</sup> See *S.K.*, Docket No. 18-1648 (issued March 14, 2019); *M.C.*, Docket No. 14-1456 (issued December 24, 2014); *Debbie J. Hobbs*, 43 ECAB 135 (1991); *Donna Faye Cardwell*, 41 ECAB 730 (1990).

<sup>6</sup> *T.G.*, Docket No. 19-0071 (issued May 28, 2019); *L.D.*, 58 ECAB 344 (2007); *Robert Breeden*, 57 ECAB 622 (2006).

<sup>7</sup> *L.H.*, Docket No. 18-1217 (issued May 3, 2019); *Trudy A. Scott*, 52 ECAB 309 (2001); *Lillian Cutler*, 28 ECAB 125 (1976).

<sup>8</sup> *A.E.*, Docket No. 18-1587 (issued March 13, 2019); *Gregorio E. Conde*, 52 ECAB 410 (2001).

<sup>9</sup> See *G.R.*, Docket No. 18-0893 (issued November 21, 2018); *Andrew J. Sheppard*, 53 ECAB 170-71 (2001), 52 ECAB 421 (2001); *Thomas D. McEuen*, 41 ECAB 387 (1990); *reaff'd on recon.*, 42 ECAB 556 (1991).

<sup>10</sup> See *O.G.*, Docket No. 18-0359 (issued August 7, 2019); *D.R.*, Docket No. 16-0605 (issued October 17, 2016); *William H. Fortner*, 49 ECAB 324 (1998).

<sup>11</sup> *B.S.*, Docket No. 19-0378 (issued July 10, 2019); *Ruth S. Johnson*, 46 ECAB 237 (1994).

<sup>12</sup> *T.G.*, Docket No. 19-0071 (issued May 28, 2019); *Marlon Vera*, 54 ECAB 834 (2003).

<sup>13</sup> *Id.*; see also *Kim Nguyen*, 53 ECAB 127 (2001).

function, must make findings of fact regarding which working conditions are deemed compensable factors of employment and are to be considered by a physician when providing an opinion on causal relationship and which working conditions are not deemed compensable factors of employment and may not be considered.<sup>14</sup> If an employee does implicate a factor of employment, OWCP should then determine whether the evidence of record substantiates that factor. As a rule, allegations alone by a claimant are insufficient to establish a factual basis for an emotional condition claim. The claim must be supported by probative evidence.<sup>15</sup> If a compensable factor of employment is substantiated, OWCP must base its decision on an analysis of the medical evidence which has been submitted.<sup>16</sup>

### ANALYSIS

The Board finds that appellant has not met his burden of proof to establish an emotional condition in the performance of duty, as alleged.

OWCP denied appellant's emotional condition claim, finding that he had not established compensable employment factors. The Board must, thus, initially review whether these alleged incidents and conditions of employment are covered employment factors under the terms of FECA. The Board notes that appellant's allegations do not pertain to his regular or specially assigned duties under *Lillian Cutler*.<sup>17</sup> Rather, appellant has alleged difficult relationships at work and a hostile working environment resulted in his stress.

Difficult relationships with supervisors and coworkers, when sufficiently detailed by the claimant and supported by the record, may constitute factors of employment. This does not imply, however, that every statement uttered in the workplace will give rise to coverage under FECA.<sup>18</sup> Appellant did not provide a detailed statement describing the employment events which he felt caused or contributed to his alleged emotional condition. He provided a general statement on his claim form that the people he worked with caused him stress. Appellant did not further describe the events or actions that he felt were stressful and did not provide specific dates or times that the events or actions occurred or who carried out the stressful activities. Furthermore, he did not submit evidence to establish his allegations.<sup>19</sup> Therefore, appellant has not established difficult working relationships as a compensable factor of employment.

In support of his emotional condition claim, appellant submitted an e-mail from his union president alleging that appellant felt that he was working in a hostile working environment and felt unsafe at work. The Board finds that appellant submitted no evidence corroborating his allegations

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<sup>14</sup> *Dennis J. Balogh*, 52 ECAB 232 (2001).

<sup>15</sup> *J.Q.*, Docket No. 17-1276 (issued December 27, 2017); *Charles E. McAndrews*, 55 ECAB 711 (2004).

<sup>16</sup> *V.R.*, Docket No. 18-1179 (issued June 11, 2019); *Norma L. Blank*, 43 ECAB 384, 389-90 (1992).

<sup>17</sup> *S.K.*, *supra* note 5; 28 ECAB 125 (1976).

<sup>18</sup> *Y.B.*, Docket No. 16-0194 (issued July 24, 2018).

<sup>19</sup> *Supra* note 15.

of a hostile work environment or harassment.<sup>20</sup> Mere perceptions of harassment or discrimination are not compensable. Appellant must establish a basis in fact for the claim by supporting his allegations with probative and reliable evidence.<sup>21</sup> Here again, the record contains no specific allegations and no corroborating evidence that he was exposed to hostility in his workplace.<sup>22</sup> Thus, appellant has failed to establish these allegations as factual.

As appellant has not established a compensable factor of employment, the Board need not consider the medical evidence of record.<sup>23</sup> As such, he has failed to meet his burden of proof.

Appellant may submit additional evidence, together with a written request for reconsideration, to OWCP within one year of the Board's merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

### **CONCLUSION**

The Board finds that appellant has not met his burden of proof to establish an emotional condition in the performance of duty, as alleged.

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<sup>20</sup> *M.C.*, Docket No. 18-0585 (issued February 13, 2019).

<sup>21</sup> *Id.*; *Curtis Hall*, 45 ECAB 316 (1994); *Margaret S. Krzycki*, 43 ECAB 496 (1992).

<sup>22</sup> *C.V.*, Docket No. 18-0580 (issued September 17, 2018).

<sup>23</sup> *Supra* note 16.

**ORDER**

**IT IS HEREBY ORDERED THAT** the September 18, 2018 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: September 19, 2019  
Washington, DC

Christopher J. Godfrey, Chief Judge  
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Deputy Chief Judge  
Employees' Compensation Appeals Board

Alec J. Koromilas, Alternate Judge  
Employees' Compensation Appeals Board